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EXAMINER

BLIZZARD, CHRISTOPHER JAMES

ART UNIT

PAPER NUMBER

3771

NOTIFICATION DATE

DELIVERY MODE

12/30/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### **DETAILED ACTION**

1. This office action is in response to amendment filed 10/09/09. As directed claims 1, 5, 6, 14, 15, and 18 were amended, claim 13 were cancelled, and claims were 20 and 21 were added. Therefore this application currently has claims 1-6 and 14-21 pending.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-6 and 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rocci (5,676,129) in view of Classen (4,194,401).

4. Regarding claims 1-3, 18-21, Rocci discloses a fluid dispensing device including a fluid dispensing member in the form of a metering valve (3) that is pumped in order to dispense medicament and a dispensing head (10) with a dispensing orifice (11) connected by an expulsion channel (7), within the channel is a dynamic pressure sensing detector (12) (Abstract) (column 5, lines 14-20) (fig. 3) used to send a signal to the user whenever a dose of fluid has been dispensed (column 3, lines 65-67). Rocci does not disclose the sensor comprising a piezoelectric material and the detector means being disposed in a sleeve co-operating at one end with the dispenser member and at the other end with the dispenser head. Classen discloses a sensor comprising a piezoelectric material (6) that is disposed in a sleeve (4) and placed around channel (1) (fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the

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invention to replace the dispensing detector of Rocci with the sleeve piezoelectric detector around a channel as taught by Jones as an obvious equivalent alternative means for detecting the presence of fluid.

5. Regarding claims 4-6, the combination of Rocci and Classen disclose the claimed invention wherein Classen teaches the detector (6) being a piezoelectric tube (fig. 1) but does not disclose the piezoelectric material being polyvinylidene fluoride. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the piezoelectric detector from polyvinylidene fluoride since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

6. Regarding claim 14, the combination of Rocci and Classen disclose the claimed invention wherein Classen discloses the sleeve being made of two part (2, 3) that engage around the detector mean (6) (fig. 1).

7. Regarding claim 15, the combination of Rocci and Classen disclose the claimed invention wherein the sleeve would be engaged around the valve member.

8. Regarding claim 16, the combination of Rocci and Classen disclose the claimed invention wherein Rocci teaches the detector (12) attached to an electronic means (14) for processing the signals.

9. Regarding claim 17, the combination of Rocci and Classen disclose the claimed invention wherein Rocci teaches the device wherein the detector is adapted to increment or decrement a dose counter (Abstract).

***Response to Arguments***

10. Applicant's arguments with respect to claim 1-6 and 14-21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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